IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2842 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DILAVAR @ DILIP @ DILIO GULABBHAI RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2842 of 2001

MR BC DAVE for Petitioner No. 1

MR SS PATEL AGP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 25/09/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Vadodara City, Vadodara, vide order dated March 1, 2001, Annexure A to the petition, detained the petitioner -

detenu.

2. Averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2 (c) of the Act as two cases for the commission of offences under Chapter XVI of the Indian Penal Code are registered against him which are pending for trial and statements of three witnesses are recorded against him. According to the detaining authority, the activities of the detenu are detrimental to the maintenance of public order, therefore, the detaining authority has exercised the powers under Section 9 (2) of the Act by not disclosing the identity of the witnesses while passing the order of detention and detained him.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the order of detention on various grounds and prayed to issue a writ, order or direction quashing and setting aside the order of detention and prayed to set him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Mr. B.C. Dave, learned advocate for the petitioner, contended that the first FIR against the petitioner was registered on January 26, 1999 and the second FIR was registered on December 12, 2000 and the order of detention was passed on March 1, 2001 and therefore there is a long gap of about three months between the registration of last offence against the detenu and the order of detention. He, therefore, contended that in view of the delay in passing the order of detention continued detention of the petitioner is not desirable and the order of detention is vitiated.

5. So far as the statements of three witnesses recorded by the detaining authority are concerned, according to the learned advocate for the petitioner, the privilege claimed by the detaining authority by not disclosing the identity of the witnesses is not genuine. Mr. Dave further contended that besides this, there is no question of breach of public order on the ground of the alleged activities of the detenu. According to him, at the most it can be said that there was breach of law and order but it cannot be said that there was breach of public order. Therefore, as there is no breach of public order the impugned order of detention is vitiated and on this count the order of detention is vulnerable and is liable to be quashed and set aside by allowing the petition and setting the petitioner at liberty forthwith.

6. Mr. S.S. Patel, learned AGP opposed the petition by filing affidavit in reply sworn by the Commissioner of Police, Vadodara City, Vadodara. In para 6 thereof, the detaining authority has dealt with exhaustively why and how the privilege was claimed by him for not disclosing the identity of the witnesses as they expressed fear in the event of disclosing their identity to the detenu. So far as the time gap of about three months between the registration of last offence against the petitioner and the date of impugned order of detention is concerned, according to him, it is not a long gap and therefore continued detention cannot be held to be illegal. He therefore urged to reject the petition.

7. I have considered the submissions advanced by the learned advocates for the parties. I have perused the averments made in the petition and the documents annexed therewith and the impugned order of detention as well as the judgments cited at the bar.

8. On the facts and circumstances emerging from the record of the case and the impugned order it is seen that against the petitioner two cases for commission of offences under Chapter XVI of the Indian Penal Code are registered on January 26, 1999 and December 12, 2000 and the order impugned was passed on March 1, 2001. Therefore, there is a time gap of two months and 18 days between the alleged incident and the order of detention.

9. A similar question arose before this Court in Elesh Nandubhai Patel v. C.P. Singh, Commissioner of Police, 1997 (2) GLR 1375. In the said judgment in view of the long gap of five months between the incident alleged and the order of detention continued detention was held not desirable and the detention order was quashed as unexplained delay made the ground of detention not proximate vitiating the order of detention itself. In the said case the detaining authority has relied on two incidents of October 2, 1996 and October 10, 1996 both unregistered cases and this Court has observed that if the allegations are really of such grievous nature why the cases are not registered against the detenu and on this ground also the order of detention is vitiated.

10. Applying the above principles laid down by this Court to the facts of the present case, at the cost of repetition, be it stated that last offence was registered against the detenu on December 12, 2000 and thus there was a time gap of two months and 18 days between the

registration of the said incident and the order of detention and therefore the continued detention is not desirable and the order of detention deserves to be quashed and set aside.

11. So far as the three statements recorded by the detaining authority in respect of unregistered cases are concerned, privilege is claimed by the detaining authority in the impugned order of detention as well as in the reply affidavit. However, in the said statements, allegations are of grievous nature and it is not understood as to why cases are not registered against the petitioner. Besides this the allegations made in the statements are not of breach of public order but they are related to the breach of law and order situation.

12. A Division Bench of this Court in Ashokbhai Jivabhai v. Police Commissioner and others, 2000 (1) GLR 816 has observed that looking to the incidents, the case falls under "law and order" and not "public order", therefore, subjective satisfaction arrived at by the detaining authority cannot be said to be legal or valid. The order of detention could have been passed for maintenance public order and therefore the order of detention is vitiated.

13. On having perusal of the statements of the three witnesses in unregistered cases, they talk about the grievance made by the maker of the statement. Therefore they cannot be called as breach of public order but it clearly speaks about breach of law and order situation and on this ground also the order of detention is vitiated.

14. Seen in the above context, the order of detention cannot be sustained and it deserves to be quashed and set aside and the petition deserves of be allowed.

15. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

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